

§ 1.881-0

U.S. income tax purposes, as the income of each spouse.

(b) *Definitions and other special rules—*

(1) *Spouses with different taxable years.* A special rule applies if the nonresident alien and the United States citizen or resident spouse of the alien do not have the same taxable years, as defined in section 441(b) and the regulations thereunder. The special rule is as follows. With respect to the U.S. citizen or resident spouse, section 879 and this section shall apply to each taxable year of the U.S. citizen or resident spouse for which no election under section 6013 (g) or (h) is in effect. With respect to the nonresident alien spouse, section 879 and this section apply to each period falling within the consecutive taxable years of the nonresident alien spouse which coincides with a taxable year of the U.S. citizen or resident spouse to which section 879 and this section apply.

(2) *Determination of marital status.* For purposes of this section, marital status shall be determined under section 143(a).

[T.D. 7670, 45 FR 6928, Jan. 31, 1980]

FOREIGN CORPORATIONS

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[T.D. 8611, 60 FR 41005, Aug. 11, 1995]

§ 1.881-1 Manner of taxing foreign corporations.

(a) *Classes of foreign corporations.* For purposes of the income tax, foreign corporations are divided into two classes, namely, foreign corporations which at no time during the taxable year are engaged in trade or business in the United States and foreign corporations which, at any time during the taxable year, are engaged in trade or business in the United States.

(b) *Manner of taxing—(1) Foreign corporations not engaged in U.S. business.* A foreign corporation which at no time during the taxable year is engaged in trade or business in the United States is taxable, as provided in § 1.881-2, on all income received from sources within the United States which is fixed or determinable annual or periodical income and on other items of income enumerated under section 881(a). Such

a foreign corporation is also taxable on certain income from sources within the United States which, pursuant to § 1.882-2, is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States.

(2) *Foreign corporations engaged in U.S. business.* A foreign corporation which at any time during the taxable year is engaged in trade or business in the United States is taxable, as provided in § 1.882-1, on all income from whatever source derived, whether or not fixed or determinable annual or periodical income, which is effectively connected for the taxable year with the conduct of a trade or business in the United States. Such a foreign corporation is also taxable, as provided in § 1.882-1, on income received from sources within the United States which is not effectively connected for the taxable year with the conduct of a trade or business in the United States and consists of (i) fixed or determinable annual or periodical income, or (ii) other items of income enumerated in section 881(a). A foreign corporation which at any time during the taxable year is engaged in trade or business in the United States is also taxable on certain income from sources within the United States which, pursuant to § 1.882-2, is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States.

(c) *Meaning of terms.* For the meaning of the term “engaged in trade or business within the United States”, as used in section 881 and this section, see section 864(b) and the regulations thereunder. For determining when income, gain, or loss of a foreign corporation for a taxable year is effectively connected for that year with the conduct of a trade or business in the United States, see section 864(c), the regulations thereunder, and § 1.882-2. The term “foreign corporation” has the meaning assigned to it by section 7701(a) (3) and (5) and § 301.7701-5 of this chapter (Regulations on Procedure and Administration), except that, for purposes of section 881 and § 1.881-2, in the case of taxable years beginning after December 31, 1971, the term “foreign corporation” does not include a corporation created or organized in Guam